IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1624 OF 2005

Ms Marium Zaveri
Adult of Mumbai, Indian Inhabitant
carrying on business in the name of
M/s.Emeralde International Hair &
Beauty Care-cum-School of Beauty
Culture & Hair Dressing as its Sole
Proprietress from her address at Flat
No.103, 3rd Floor, Zeba Apartments,
33B, Hill Road, Bandra (West),
Mumbai 400 050. : Petitioner

V/s.

1. The Municipal Corporation of Greater Mumbai a statutory Corporation constituted under the Bombay Municipal Corporation Act, 1888
2. The Executive Engineer-Western Suburbs (Building Proposal), H-West Ward, M.C.G.M., having his office at S.K. Patkar Marg, Bandra (West), Mumbai—400 050.
3. The Assistant Municipal Commissioner, H/West Ward M.C.G.M.
4. Sr.License Inspector & Legal Asstt. JR. H/West Ward, M.C.G.M. Nos.3 and 4, both having their Offices at St. Martin

Road, Bandra (West),
Mumbai—400 050. : Respondents

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Mr.N.G. Bhatt for the petitioner.
Ms Priti Purandare for the respondents.

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CORAM : DALVEER BHANDARI,C.J. &
S.A. BOBDE, J.
DATE : OCTOBER 14, 2005.

ORAL JUDGEMENT (Per Dalveer Bhandari, C.J.)

1. The petitioner as the proprietress of her firm M/s.Emerald International Hair & Beauty Care-cum-School of Beauty Culture and Hair Dressing, who is the owner and in possession of the premises, being flat No. 103, 3rd floor, Zeba Apartment, 33B Hill Road, Bandra (West), Mumbai—400 050, has filed this petition with a prayer that her application for regularisation of user of her premises from residential to that of commercial be considered, in accordance with law.

2. Pursuant to the show cause notice issued by this Court, reply has been filed on behalf of the respondent-Corporation. In the reply, it is clearly mentioned that the petitioner has

changed the user from residential to commercial i.e., for running coaching classes for beauty culture, without permission. According to the petitioner, for regularisation, the petitioner is under an obligation to pay in accordance with the circular dated 24.12.1996 dealing with penalty to be charged for regularisation of unauthorised change of user in existing buildings. The Circular reads as follows:-

> "MUNICIPAL CORPORATION OF GREATER MUMBAI
>
> No.CHE/3140/DPC of 24-12-96
>
> CIRCULAR
>
> Sub: Penalty to be charged for regularization of unauthorized change of users in existing buildings.
>
> Ref: Circular u/No.CHE/4808/DPC of 24-4-96.
>
> The policy circular issued under No.CHE/4808/DPC on 24-4-96 lays down compensation charges to be recovered for regularization of various categories of unauthorized work carried out beyond approved plan or before issue of C.C.etc. The said circular however, does not specify the penalty to be

recovered for regularization of unauthorized change of users.

It is now decided to recover penalty at the rate of 15% of the land rate applicable for the locality, (premium), as approved by the M.C. from time to time as per Sr. No.5 of above policy circular.

The staff working in Bldg. Proposal Section should take note of above & recover penalty for regularization of unauthorized change of user as per above policy.

Sd/- 31-10-96 Sd/- 1-11-96 Sd/- 30-11-96

Dy.Ch.E.D.P.(1) CH.E.(D.P.) Director (E.S.&P.) i/c.

No.CHE/3140/DPC of 24-12-96.

Copy forwarded for information please.

Sd/-
21-12-96
DY.CH.E.(D.P.)I."

The case of the petitioner is that the petitioner be governed

according to the terms and conditions of this circular and whatever penalty which has been incorporated in the circular, she is prepared to pay.

3. According to the petitioner, she has been wrongly asked to pay according to the circular dated 17.6.2004. The circular reads as follows:-

> "MUNICIPAL CORPORATION OF GREATER MUMBAI
> No.CHE/77/DPC/Gen. dt. 17.06.04
>
> Sub:-Order of Hon'ble High Court in PIL 379 of 2003 in respect of 154 cases.
>
> Ref:- MCP/8816 dt. 20.5.2004
>
> In view of the aforesaid order, it has become necessary to revise the policy in respect of charging premium for carrying out works beyond approval/C.C.etc. The policy hitherto being followed and which has also been submitted to Hon'ble Court is enclosed at P.77-79. It can be seen therein that the penalties have been proposed as 5% to 15% of the land cost and later on the penalty for the total unauthorized work has been doubled i.e. 30% of the land cost. The land cost here is considered as premium rates issued by M.C.G.M. from time-to-time

by M.C.G.M. based on Ready-reckoner rates (25% of R&R).

The matter was discussed with the Zonal Dy.Ch.E. (B.P.) and E.E.B.P.s in order to device a stringent penalty so as to discourage the developer from carrying out work without/beyond approval.

It was general consensus that so many categories being followed in the earlier circular should be scrapped so as to be simple for implementation. After general consensus, following guide-lines were agreed upon:-

Category	Type	Scale of penalty % of premium rates (25% of R&R rates)
(1)	Work carried out beyond C.C. but within the approved plan	10%
(2)	Work carried out beyond C.C. and within the approved plan but after issue of stop work notice.	20%
(3)	Work carried out without approval but within plot potential.	30%
(4)	Work carried out without approval but regularizable by way of user TDR or amalgamation of additional plots etc.	40%

The mode of charging premium for condoning the

deficiency in open space etc. was also discussed when it was opined that, presently, for condonation of deficiency in open space affected area of all the floors is being considered instead only at land level which itself is deterrent and the premium for condonation of deficiency at times, works out very huge. Therefore there appears to be no need to change the present practice in this respect. As regards charging premium for staircase, lift, F.S.I. etc., the present policy of charging premium rates and circulated by M.C.G.M. from time-to-time (25% of R & R rates) will be continued.

In view of above, approval of Dir.(E.S.& P.)/M.C. is requested to the above policy vide portion side-lined `X' above, so that the same will be applicable while considering regularization cases under 154 or other such cases.

Submitted please."

According to the petitioner, she cannot be governed by this circular.

4. The petitioner has also drawn our attention to the notice dated 18.9.2002. According to this notice also, the petitioner has changed the user from residential to commercial.

5. In the facts and circumstances of the case, we direct the petitioner to deposit money according to the circular dated 24.4.1996 with the Corporation. We further direct the Executive Engineer, Western Suburbs (Building Proposal), to grant hearing to the petitioner and decide this controversy as to whether the petitioner should be governed by 1996 or 2004 circular, by a reasoned order. The petitioner submits that ultimately, if it is found that she is governed by the 2004 circular, she would pay the balance amount to the Corporation within four weeks of the decision by the Executive Engineer, Western Suburbs. To avoid any delay in the matter, we direct the petitioner to appear before the Executive Engineer on 14.11.2005 at 11 a.m. Meanwhile, we direct that the prosecution, which has been launched against the petitioner, viz., Case No.8665/SS/H of 2004 and C.C. No.48/PW/C pending before the Metropolitan Magistrate's 39th Court, Vile

Parle, Mumbai, shall remain stayed, till the Corporation decides the controversy, after hearing the parties, by a reasoned order.

6. This petition is, accordingly, disposed of.

CHIEF JUSTICE

S.A. BOBDE, J.